

EQUITABLE RELIEF GRANTED BY THE
SECRETARY OF VETERANS AFFAIRS
IN CALENDAR YEAR 2001

Case #1

On December 28, 1995, the veteran whose surviving spouse is at issue in this case, died from a nonservice-connected disease. A Veterans Benefits Counselor (VBC) interviewed the surviving spouse on January 9, 1996, but did not advise her of the requirement to file VA Form 21-530 to claim the VA burial and plot allowance. This form must be filed within two years of the veteran's death. The VA Regional Office (VARO) received the application for burial benefits from the funeral home three and one-half years after the veteran's death. Because it was beyond the two-year statutory deadline, the VARO denied the claim. The VBC reviewed the interview sheet and realized the omission error in not discussing the necessity of filing VA Form 21-530. The surviving spouse appealed the denial of the claim, but the Board of Veterans Appeals upheld the VARO decision. The surviving spouse then filed for equitable relief. The Secretary granted equitable relief for \$450.00 (\$300.00 for burial and \$150.00 for plot allowance) under 38 U.S.C. § 503(b) on the basis that VA's administrative error in failing to advise the veteran's spouse of the requirement to file a claim for burial benefits prevented her from filing a timely claim.

Case #2

The provisions of Title 38 U.S.C. § 3903 allow a one-time VA payment for an adaptive automobile for veterans with a service-related disability or disabilities. The veteran applied for and received this allowance in 1946. The veteran applied for this allowance again, 54 years later, and the VA Regional Office (VARO) erroneously approved it. The VARO then realized the error and advised the veteran that VA was not able to make the payment of the automobile allowance because a previous claim for this benefit had already been paid. Since the VARO failed to properly review the claims folder to determine that the one-time payment had already been made prior to approving an erroneous second payment, the Secretary granted relief in the amount of \$8,000.00 under 38 U.S.C. § 503(a).

Case #3

The veteran, needing emergency medical attention, caused a family member to contact the nearest VA Medical Center (VAMC), 50 miles away. A VAMC staff physician told the family member that the veteran should be taken to the nearest non-VA medical facility and that the VA would pay for the emergency treatment. The veteran did so, filed a claim for the treatment, but was denied because he did not meet the eligibility criteria. The Board of Veterans' Appeals upheld the denial, but suggested in response to a congressional inquiry that the veteran seek "equitable relief," based on the erroneous advice provided by the VAMC physician. The Secretary granted equitable relief in the amount of \$7,256.89 under 38 U.S.C. § 503(a), based upon the VA physician's administrative error in advising that VA would pay for the veteran's treatment.

Case #4

The patient is currently hospitalized at a VA Medical Center (VAMC) for advanced liver disease and is awaiting a liver transplant operation. The VAMC mistakenly determined that this individual was a veteran eligible for VA health care and confirmed that eligibility in a letter to him. The Veterans Health Administration (VHA) subsequently determined he was not an eligible veteran because his period of service was for active duty training only. The Secretary granted administrative relief under Title 38, § 503(b) absolving the patient of any previous indebtedness for prior VA treatment and providing for continued VA care until non-VA medical care could be provided.

Case #5

The totally disabled veteran was wheelchair bound and eligible for special automotive adaptive equipment in 1995, but VA never notified him of this eligibility. The veteran became aware of it in March 2000, and applied for this benefit. Although existing VA records were sufficient to support an eligibility determination without an additional examination, such an evaluation was scheduled in May 2000, resulting in further delay. The veteran and his spouse obtained a loan to pay for the wheelchair lift in anticipation of VA approval of his application. After further administrative delays, VA approved the veteran's application, four days after his death. His widow was not able to obtain reimbursement for the cost of the adaptive equipment because this benefit is not an accrued benefit for surviving spouses. The Secretary granted the widow's request for equitable relief in the amount of \$3,742.05 under 38 U.S.C. § 503(a), due to VA's administrative errors in failing to advise the veteran of his eligibility and in failing to provide the benefit in a timely manner.

Case #6

The veteran's service connected disability is based upon a below the right knee amputation. On January 7, 1982, the veteran was paid an adaptive automobile allowance of \$4,400. On June 8, 1999, 17 years later, the veteran submitted VA Form 21-4502 and indicated that he did not receive a previous application for an automobile allowance. Payment for the allowance was authorized on July 15, 1999. The amount authorized was \$8,000.00. The veteran traded in his older vehicle for a new vehicle. The difference in price was \$8,000.00. The automobile dealership received a notice of denial of the payment based on a previous authorization. The veteran's representative, The American Legion, requested equitable relief. The Secretary granted equitable in the amount of \$8,000 under the authority of 38 U.S.C. 503(b).

Case #7

The veteran participated in the Montgomery GI Bill (MGIB) program while on active duty. She was discharged on August 29, 1990. Her correct delimiting date for eligibility was August 30, 2000. The VA misinformed her that she was entitled to use her benefits any time prior to March 27, 2005. She relied on the incorrect representation by VA and delayed her education plans, believing she had ample time to use her benefits after August 2000. Due to VA's administrative error the Secretary granted her equitable relief under 38 USC 503(b), by allowing the veteran to pursue her educational goals with the help of MGIB benefits until March 27, 2005.

Case #8

VA authorized Montgomery GI Bill (MGIB) benefits for the veteran in December 1998, but determined in May 1999 that he was not eligible for them. VA terminated MGIB payments, waived the resulting overpayment, and notified the veteran of his ineligibility. The veteran had, however, already paid for tuition, fees, and other expenses for additional courses in reliance upon the initial erroneous eligibility determination. The veteran appealed the denial of continued MGIB payments and sought equitable relief. As the result of VA's administrative error, the Secretary granted equitable relief under 38 U.S.C. § 503(b) in the amount of \$3,460.67.

Case #9

The veteran underwent surgery at a German hospital in February 1997 for a service-connected disability. The German hospital sent the bill for services to VA, but VA misfiled it and made no payment. By the time VA located and paid the bill in June 2000, the German hospital had sued the veteran, causing him to incur court costs and interest damages in the amount of \$1,255.37. The veteran requested equitable relief for these additional costs. The Secretary granted the requestor equitable relief under 38 U.S.C. § 503(a) because of VA's administrative error in misfiling the bill.

Case #10

During his lifetime, the veteran received VA service connected benefits based upon several disability ratings. In 1944, he was rated as 80% disabled. This rating increased to 90% in 1977. He applied to have this increased to a 100% disability in July 1977, based upon "Individual Unemployability," but that claim was denied. He reopened his claim in August 1978, and, based upon a new medical evaluation, VA granted him the 100% rating. The veteran died 9 years and 7 months later.

Following the veteran's death, his widow applied for Dependency and Indemnity Compensation, but this claim was denied because the veteran neither died of a service connected disability nor was rated 100% disabled for a period of 10 years immediately preceding his death. The widow then sought to have the earlier evaluations of the veteran's disability reconsidered based upon Clear and Unmistakable Error (CUE). The Regional Office denied the CUE claim. The widow appealed to the Board of Veterans Appeals, which likewise denied her claim. She appealed that denial to the Court of Appeals for Veterans Claims (CAVC), but it also denied her claim. The widow then requested equitable relief from the Secretary.

The Under Secretary for Benefits, in supporting the widow's request, noted that the early disability rating decisions were incorrect in several respects. The Under Secretary expressed the view that VA failed to properly grant service connection for two specific injuries, failed to assign a proper combined rating, and failed to take into account a separate service connected rating which, in combination with his other disabilities, should have resulted in a 100% rating at an earlier date, thus qualifying the widow for DIC benefits.

The Secretary weighed the views of the Under Secretary and the Acting General Counsel, and considered the facts in the case. He then decided to grant equitable relief to the widow under 38 U.S.C. 503(a) and 503(b) in the amount of \$121,442.00, representing retroactive DIC benefits through November 30, 2000 and, in addition, by continuing DIC benefits at the appropriate monthly rate following that date.

Case #11

Because of his bilateral blindness, VA approved the veteran's eligibility for a supplemental grant under the Special Housing Adaptation (SHA) grant program for modifications to his house. The administering VA office inadvertently closed the escrow account for his grant request while the veteran's request for a supplemental grant was still pending. He incurred a binding obligation while awaiting action on the supplemental grant request, and suffered a financial loss as a result of his reliance on VA information. Under the provisions of 38 U.S.C. § 503(a) the Secretary granted the veteran equitable relief in the amount of \$225.00, because of VA's administrative error in prematurely closing the escrow account.

Case #12

The widow of the deceased veteran successfully appealed her claim for Dependency and Indemnity Compensation (DIC) benefits to the Court of Appeals for Veterans Claims. However, in processing the widow's case following the CAVC decision, the VARO committed repeated errors resulting in a failure to generate any payments before she died. The Secretary granted equitable relief according to 38 U.S.C. § 503(a), in the amount of \$102,891.00 payable to the surviving son for retroactive Dependency and Indemnity Compensation (DIC) benefits that were due his mother prior to her death.

Case #13

The State of Nebraska submitted to the VA a pre-application for a State home construction grant to build a new nursing home. The Secretary conditionally approved the project. VA improperly paid eight reimbursements to the State of Nebraska for the project prior to the submission to the Secretary for final approval of the grant award. It was subsequently determined that final VA approval of the nursing home was inappropriate because the regulatory number of beds per thousand veterans in the surrounding population was exceeded. Representatives of VA and the State of Nebraska had not discussed or applied these regulations during the earliest stages of the project. The Under Secretary of Health has since implemented remedies for review and approval of future applications for construction grants. As a remedy to correct VA's administrative errors, VHA recommended that the State of Nebraska receive a grant under the Secretary's equitable relief authority. The Secretary granted equitable relief to the State of Nebraska under the authority of 38 U.S.C. § 503(b), in the amount of \$10,527,467.00.